JUL 19 1972
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

NO. 72-111

JEFFREY PHILLIP BLOOM, BARRY JAY KANTOR and BRUCE ANDREW ROBIN,

Petitioners,

vs.

THE STATE OF FLORIDA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Law Offices of
POLLACK & YOCOM
Suite 100
1700 N.W. 7th Street
Miami, Florida
Counsel for Petitioners

MIAMI REVIEW — 371-4853 — 377-3721

TABLE OF CONTENTS

	Page
INTRODUCTION	1
CITATIONS TO OPINIONS BELOW	2
JURISDICTION	2
QUESTION PRESENTED	2
STATEMENT OF THE FACTS	2-3
REASONS FOR GRANTING THE WRIT	3-7
CONCLUSION	8
AFFIDAVIT OF SERVICE	9-10

APPENDIX

Appendix A	App. 1-2
Appendix B	App. 3

TABLE OF CITATIONS

Case	Page
Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969)	5, 6
Cainley v. Cochan, 369 U.S. 511, 82 S.Ct. 884 (1962)	4
Douglas v. Alabama, 380 U.S. 415, 85 S.Ct. 1074 (1965)	6
Duncan v. Louisiana, 391 U.S. 145, 88 S.Ct. 1444 (1968)	5
Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019 (1938)	6
Kercheval v. United States, 274 U.S. 220, 47 S.Ct. 582 (1927)	5
McCarthy v. United States, 89 S.Ct. 1166 (1968)	5
Malloy v. Hogan, 378 U.S. 1, 84 S.Ct. 1489 (1964)	5
Pointer v. Texas, 380 U.S. 400, 85 S.Ct. 1065 (1965)	5

In the Supreme Court of the United States

NO. _____

JEFFREY PHILLIP BLOOM, BARRY JAY KANTOR and BRUCE ANDREW ROBIN,

Petitioners,

vs.

THE STATE OF FLORIDA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Petitioner prays that a Writ of Certiorari be issued to review the judgment of the District Court of Appeal of Florida, Third District, entered in the above styled case on April 18, 1972.

CITATIONS TO OPINIONS BELOW

The opinion of the District Court of Appeal of Florida, Third District, is reported at ____ So.2d ____ and is printed at Appendix "A". The opinion of the Supreme Court of Florida denying the Petition for Writ of Certiorari is reported at ____ So.2d ____ and is printed at Appendix "B".

JURISDICTION

The judgment of the District Court of Appeal of Florida, Third District, was entered on April 18, 1972. The Florida Supreme Court denied Certiorari on June 9, 1972. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257 (3).

QUESTION PRESENTED

Is it a violation of a criminal Defendants rights to accept a guilty plea without full and adequate inquiry as to the voluntariness of the pleas?

STATEMENT OF THE FACTS

The case against the Defendant Bloom, 71-4857, was called first. After a Motion to Suppress was denied by the Court (R. 20) the case proceeded to trial. After the State rested the defense moved for a directed verdict of acquittal. (R. 50) This was denied. The defense then announced it would not put on testimony but would renew its motions. These were denied. Counsel then withdrew the prior pleas and tendered a plea of nolo. (R. 51)

The court questioned the Defendant as to his understanding of what was occurring. The Defendant indicated he knew he was not challenging the truth of what he had been charged with. He further indicated he knew the maximum sentence which might be imposed.

Case number 71-5832 was called next. All defendants entered pleas to the charges. (R. 54) The State abandoned count two as it related to Kantor and Bloom. (R. 55)

Bloom indicated he knew he was pleading to possession. Further he indicated he knew the maximum sentence the Court could impose. (R. 56) The Defendant stated that he understood he was waiving his right to trial. (R. 56)

Kantor indicated the same things (R. 57) Robin indicated that he had heard what was told to the other Defendants. (R. 58) He realized he could be sent to the "State Prison". (R. 59)

REASONS FOR GRANTING THE WRIT

In the case at bar, the trial judge erred in failing to explain the consequences of a plea of guilty to the Defendants resulting in a plea made from either ignorance, incomprehension, coercion, terror, inducements, subtle or blatant threats.

It is a fundamental principle that when a Defendant relinquishes a vested right, he should clearly understand the ramifications of the act before being allowed to do so. It is the inherent function of the trial judge to inform

the Defendant of the consequences of a waiver of any rights guaranteed by the Constitution of the United States.

In **Cainley v. Cochan,** 369 U.S. 511, 82 S.Ct. 884 (1962) the Defendant was not afforded the assistance of counsel at hi trial.

The question presented to the Appellate Court was whether the Defendant intelligently and understandingly waived the assistance of counsel, the trial record did not show that the Judge offered and the Defendant declined counsel. Nevertheless, the State Supreme Court imputed to Defendant the waiver of the benefit of counsel on a ground stated in the Court's opinion as follows: "If the record shows that Defendant did not have counsel . . ., it will be presumed that Defendant waived the benefit of counsel . . ."

The Supreme Court of the United States overturned the conviction stating:

> "Where an accused may waive the right to counsel, whether there is a proper waiver should be clearly determined by the trial court, and it would be fitting and appropriate for that determination to appear upon the record."

Continuing on, the Court specifically mandated that:

> "Presuming waiver from a silent record is impermissible, the record must show or there must be an allegation and evidence which show, that an accused was offered counsel but intelligently and understandingly rejected the offer. Anything less is not a waiver."

The Supreme Court in **Boykin v. Alabama**, 395 U.S. 238, 89 S.Ct. 1709 (1969) agreed that the same standards must be applied to determine whether a guilty plea was voluntarily made. A plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment. **Kercheval v. United States**, 274 U.S. 220, 47 S.Ct. 582 (1927). Since this plea is of upmost importance, the courts must watch carefully that the plea is not made through ignorance, incomprehension, coercion, terror, inducements, subtle or blatant threats, all of which might be a cover up of unconstitutionality. **Boykin**, supra.

> "What is at stake for an accused facing death or imprisonment demands the utmost solicitude of which courts are capable in convassing the matter with the accused to make sure he has a full understanding of what the plea cannotes and of its consequences." **Boykin**, supra at 244.

Several fundamental constitutional rights are involved in a waiver that takes place when a plea of guilty is entered in a state criminal trial. First, is the privilege against compulsory self-incrimination guaranteed by the Eighth Amendment and applicable to the States by reason of the Fourteenth Amendment. **Malloy v. Hogan**, 378 U.S. 1, 84 S.Ct. 1489 (1964). Second, is the right to trial by jury. **Duncan v. Louisiana**, 391 U.S. 145, 88 S.Ct. 1444 (1968). Third, is the right to confront one's accusers. **Pointer v. Texas**, 380 U.S. 400, 85 S.Ct. 1065 (1965); **McCarthy v. United States**, 89 S.Ct. 1166 (1968).

The trial record in **Boykin**, supra, as in the case at bar, did not reveal that the judge explained the consequences of a plea of guilty and the loss of the above rights. It has been pointed out in **Johnson v. Zerbst**, 304 U.S. 458, 58 S.Ct. 1019, (1938), that

> "Courts indulge every reasonable presumption against waiver of fundamental constitutional rights and that we do not presume acquiescence in the loss of fundamental rights."

Therefore, the Court cannot presume a waiver of important federal rights from a silent record. Consequently, the Supreme Court in **Boykin**, supra held that:

> "It was error plain on the face of the record, for the trial judge to accept Petitioner's guilty plea without an affirmative showing that it was intelligent and voluntary."

This is precisely the situation in the case sub judice. The transcript of the trial taken when the plea was entered affirmatively reflects that the Defendants were not advised of the consequences of their plea of guilty. The question of an effective waiver of a federal constitutional right in a proceeding is governed by federal standards. **Douglas v. Alabama**, 380 U.S. 415, 85 S.Ct. 1074 (1965). Consequently, if a Defendant's guilty plea is not equally voluntary and knowing, it has been obtained in violation of due process and is therefore void **Johnson**, supra.

Finally, no case has ever stated that the necessary instructions by the trial judge must only be given if the plea of guilty is entered before the trial begins. If the sacred rights of the Constitution of the United States are to be preserved, there should be no difference permitted in the quality or quantity of the instructions given even if the trial is in progress when the plea of guilty is entered.

The defense submits that the Defendants did not fully understand the consequences of their plea of guilty. They would not have entered them if the trial judge had explained to them that to enter such a plea results in a waiver of every important and fundamental right guaranteed to the people by the Constitution.

Since, as shown, a guilty plea waives many constitutional rights, and such waiver cannot be presumed from a silent record, it is submitted that based upon the record in the case at bar, the guilty pleas should be set aside and a new trial granted.

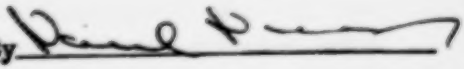
In order to gain this result this Court should grant a writ of certiorari and quash the opinion below.

CONCLUSION

For the above reasons it is submitted that the Writ of Certiorari in this case should be issued and the Court should consider this case on the merits.

Respectfully submitted,

Law Offices of
POLLACK & YOCOM
Suite 100
1700 N.W. 7th Street
Miami, Florida

By 

In the Supreme Court of the United States

NO. _____

JEFFREY PHILLIP BLOOM, BARRY JAY KANTOR and BRUCE ANDREW ROBIN,

Petitioners,

vs.

STATE OF FLORIDA,

Respondent.

AFFIDAVIT OF SERVICE

STATE OF FLORIDA :

SS

COUNTY OF DADE :

I, PAUL POLLACK, first being duly sworn according to law, do depose and say:

I HEREBY CERTIFY that a copy of the Petition for Writ of Certiorari to the Supreme Court of the United States was served upon the office of the HONORABLE

ROBERT L. SHEVIN, Attorney General, 1350 N.W. 12th Avenue, Miami, Florida, this 18 day of July, 1972, by mailing a copy of same to him by United States Mail, First Class postage prepaid, pursuant to Rule 33 of this Court.

PAUL POLLACK
Counsel for Petitioners

SWORN TO AND SUBSCRIBED TO before me at Miami, Dade County, Florida, this 18 day of July, 1972.

NOTARY PUBLIC, State of Florida at Large

My Commission Expires:

• • •

NOTARY PUBLIC, STATE of FLORIDA at LA
MY COMMISSION EXPIRES AUG. 27, 1

APPENDIX

APPENDIX A

[Received 6/14]

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A.D. 1972

FRIDAY, JUNE 9, 1972

CASE NO. 42,301

DISTRICT COURT OF APPEAL,
THIRD DISTRICT

JEFFREY PHILLIP BLOOM, BARRY JAY KANTOR and BRUCE ANDREW ROBIN,

Petitioners,

vs.

STATE OF FLORIDA,

Respondent.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

ROBERTS, C.J., ERVIN, CARLTON, ADKINS and BOYD, JJ., concur

CC: Hon. W. P. Carter, Clerk
Hon. J. F. McCracken, Clerk
Hon. Paul Baker, Judge
Hon. Paul Pollack
Hon. Robert L. Shevin
(Hon. Reeves Bowen)
Hon. J. Robert Olian
(Mr. William L. Rogers)

A True Copy

TEST:

Sid J. White
Clerk Supreme Court.

By: /s/ Dave Lang, Jr.

DAVE LANG, JR.

Chief Deputy Clerk
Supreme Court of Florida

• • •

APPENDIX B

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING PETITION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT

JANUARY TERM, A.D. 1972.

CASE NOS. 71-1166
71-1167
71-1168
71-1174

JEFFREY PHILIP BLOOM, BARRY J. KANTOR, BRUCE ANDREW ROBIN,

Appellants,

vs.

THE STATE OF FLORIDA,

Appellee.

Opinion filed April 18, 1972.

Appeals from the Criminal Court of Record for Dade County, Paul Baker, Judge.

Pollack, Yocom & Fath, for appellant.

Robert L. Shevin, Attorney General and J. Robert Olian, Assistant Attorney General, for appellee.

Before BARKDULL, C.J., and CHARLES CARROLL and HENDRY, JJ.

PER CURIAM

Affirmed.

FILE COPY

FILED
NOV 3 1
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

NO. 72-111

JEFFREY PHILLIP BLOOM, BARRY JAY KANTOR and BRUCE ANDREW ROBIN,

Petitioners,

-vs-

STATE OF FLORIDA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL THIRD DISTRICT OF FLORIDA

BRIEF OF RESPONDENT IN OPPOSITION

ROBERT L. SHEVIN
Attorney General

WILLIAM L. ROGERS
Assistant Attorney General

State of Florida
State Office Building (530)
1350 N. W. 12th Avenue
Miami, Florida 33136

TOPICAL INDEX TO BRIEF

Page

OPINION BELOW. 1

JURISDICTION 1

QUESTION PRESENTED 1

STATEMENT OF THE FACTS 1

ARGUMENT 2-4

CONCLUSION 4

TABLE OF CASES

Boykin v. Alabama, 395 U.S. 238, 23 L.ed.2d 274, 89 S.Ct. 1709, (1969). 2, 4

United States v. Frontero, 452 F.2d 406 (5 Cir.,1971). 3-4

APPENDIX

Pages i-ix

OPINION BELOW

The opinion of the District Court of Appeal of Florida, Third District, is reported at 261 So.2d 578 (Fla., 3 DCA, 1972) and is attached to the petition for writ of certiorari as Appendix "A". The opinion of the Supreme Court of Florida denying the petition for writ of certiorari is reported at 263 So.2d 828 (Fla., 1972), and is attached as Appendix "B".

JURISDICTION

The jurisdictional requisites are set forth in the petition.

QUESTION PRESENTED

Respondent respectfully rephrases the petitioners' Question Presented as follows:

> Is it a violation of a criminal defendant's rights for the trial court to accept his guilty plea when the trial court established a record adequate to disclose that the defendant tendered his guilty plea voluntarily and understandingly?

STATEMENT OF THE FACTS

The respondent respectfully adopts petitioners' Statement of the Facts as substantially reflecting the proceedings in the trial court. However, the respondent has appended its Appendix "A" to show the plea colloquy of the petitioners.

ARGUMENT

The petitioners contend that under the authority of Boykin v. Alabama, 395 U.S. 238, 23 L.ed.2d 274, 89 S.Ct. 1709 (1969), his plea colloquy was inadequate. It is submitted, however, that the record in the instant case reflects that a full and complete plea colloquy, as contemplated by Boykin, supra, did in fact occur, thereby obviating the federal question allegedly raised.

In Boykin v. Alabama, this Honorable Court addressed itself to a record in which no plea colloquy appeared, in which the judge asked no questions of the defendant, and in which the defendant at no time addressed the court. On these facts the Court held that it was error on the face of the record for the trial judge to accept a guilty plea without an affirmative showing that it was intelligent and voluntary (395 U.S. at 242).

By contrast, the record in the instant case reveals a complete and thorough inquiry into the defendants' understanding of the ramifications of their pleas. The Boykin Court did not set forth a list of questions of a required procedure for ascertaining the state of the defendant's understanding. Instead it simply required that the trial judge quiet his doubts that the plea offered may not be knowing and voluntary, and that a record of this exchange with the defendant be left to forestall collateral proceedings.

In United States v. Frontero, 452 F.2d 406 (5 Cir.,1971), defendant Kelly argued, as do the instant petitioners, that his plea was invalid as he was not informed of the constitutional rights waived as a consequence of his guilty plea. (Id. at 415). Defendant Kelly asserted, as do petitioners at bar, that he should have been informed that his plea constituted a waiver of his right to confront his accusers and of his privilege against compulsory self-incrimination. Each of these contentions was denied by the court for the following reasons:

> "This Court is, however, aware of no precedent, from the Supreme Court or elsewhere, for the proposition that due process requires that a defendant be informed of each and every right which is waived by a guilty plea or that the waiver of these rights is a 'consequence,' within the meaning of Rule 11, of which a defendant must be personally informed before a guilty plea may be accepted. Carrying Kelly's argument to its logical conclusion, the court, before accepting a guilty plea, would be required to inform a defendant of his right to a speedy and public trial, his right to an impartial jury, his right to compulsory process for obtaining witnesses, his right to be free from cruel and unusual punishment, his right to be free from unreasonable searches and seizures, his right to have excluded from the trial any evidence illegally seized,

> and many more. We do not read Rule 11 as requiring this; nor do we feel that due process requires this."

Id. at 415.

It is submitted that the plea colloquy below established beyond any doubt that the defendants knew the charges to which they were pleading and were aware of the consequences of their action. Under the law as announced in Boykin, supra, the trial judge was required to do no more.

CONCLUSION

It is respectfully submitted that the decisions of the state courts in the instant cause do not conflict, but are in harmony with applicable federal law and the decisions of this Court. A substantial federal question has therefore not been presented, leaving the petition without jurisdictional basis.

Respectfully submitted,

ROBERT L. SHEVIN
Attorney General

WILLIAM L. ROGERS
Assistant Attorney General

State of Florida

Counsel for the Respondent.

A P P E N D I X

Pages 50 through 59 of the transcript of testimony had at trial.

"MR. O'DONNELL: At this time, your Honor, the State rests.

"MR. GOLDMAN: At this time, your Honor, the defendant moves for a directed verdict of acquittal.

"THE COURT: Denied.

"MR. GOLDMAN: All right.
Barry -- can we have just a second, Judge?

(Thereupon a short recess was taken after which the following proceedings were had:)

"MR. GOLDMAN: Your Honor --

"THE COURT: Yes.

"MR. GOLDMAN: We are not going to put on any testimony but we will renew our motion and see what reaction we get out of the court.

"THE COURT: You won't get any reaction except I'm going to deny it.

"MR. GOLDMAN: Your Honor, Barry and I just discussed this and we will withdraw the plea of not guilty and enter a plea of nolo contendre.
It is tantamount to a guilty plea but we will plead nolo.

"THE COURT: As charged?
All right. I don't want to enter anything until I finish with the other case.

Let me just ask him this: Do you understand -- How old is he?

"MR. GOLDMAN: He is 20. He is a student.

"THE COURT: Parents here?

"MR. GOLDMAN: No, I am in touch with them.

"THE COURT: The parents know about the case?

"MR. GOLDMAN: Everything.

"THE COURT: You understand that you have gone through the entire trial at this point and at the conclusion thereof, prior to the court making any determination of the issue, you are withdrawing your plea of not guilty and entering a plea of nolo contendre; do you understand that?

"DEFENDANT BLOOM: Yes, sir.

"THE COURT: Do you understand that means you do not contest the truth of the charge against you?

"DEFENDANT BLOOM: Yes, sir.

"THE COURT: Do you understand that that is a felony in this State, punishable of up to seven years in the State penitentiary for a first offense?

"DEFENDANT BLOOM: Yes, sir.

"THE COURT: Do you understand that you are entitled to conclude this trial, if you wanted to, rather than enter the plea?

"DEFENDANT BLOOM: Yes, sir.

"THE COURT: Have you had the opportunity to discuss this with your attorney?

"DEFENDANT BLOOM: The case, sir?

"THE COURT: Have you discussed it with your attorney?

"DEFENDANT BLOOM: Yes, sir.

"THE COURT: Has anyone made you any promise, threat, coerced, forced, or made you enter this plea against your will?

"DEFENDANT BLOOM: No.

"THE COURT: State ready on 5832, A, B, and C?

"MR. O'DONNELL: Yes, your Honor, the State is ready.

"THE COURT: I am going to hold off until I get all cases disposed of.
Let's have the defendants Kantor and Robin before the court.
All witnesses.
Let me see the Information on 5832.

"MR. GOLDMAN: I want to say this, Judge, I think I performed my duty as an attorney, as far as I went.
These boys are real good kids and they admitted to me that and we are going to plead.

"THE COURT: To what?

"MR. GOLDMAN: To the possession here, now, Judge.

"THE COURT: Is the State going to abandon the second count?

"MR. O'DONNELL: Under most conditions I would but I have -- it is a misdemeanor. There are some interested parties.

I, in good faith, cannot abandon. We would like the plea as charged.

"THE COURT: Take a couple of minutes and discuss it.

Five minute recess.

(Thereupon a recess was taken after which the following proceedings were had:)

"THE COURT: What did you decide?

"MR. O'DONNELL: Will you plead as charged?

"MR. GOLDMAN: We can't. They admitted what they admitted but not that.

"THE COURT: Swear the witnesses.

(Thereupon the witnesses present were duly sworn.)

"MR. O'DONNELL: Are we proceeding on just two counts for trial?

"THE COURT: I don't know.

"MR. O'DONNELL: What is the status? Are you pleading to count one or are we trying count two or what?

"MR. GOLDMAN: We will drop it as to two, okay, as to one. The boys are telling the truth. There is no sense going through all this.

"THE COURT: He doesn't want to drop it.

"MR. O'DONNELL: You mean as to one defendant?

"MR. GOLDMAN: Two defendants. One is admitting it to you.

"MR. O' DONNELL: One individual?

"MR. GOLDMAN: One individual says yes, whatever he said. The other two --

"MR. O'DONNELL: Which of the two that aren't?

"MR. GOLDMAN: Kantor and Bloom.

"MR. O'DONNELL: As to Kantor and Bloom the State will abandon count two.

"THE COURT: All right.
Apparently this charge doesn't compute because it comes out unlawful use of a credit card.
All right, now, first of all Jeffrey Bloom, do you understand that you are now pleading guilty, through your counsel, to a charge of possession of narcotics?

"DEFENDANT BLOOM: Yes, sir.

"THE COURT: You understand that this is a felony in this State punishable by up to five years in the state prison?

"DEFENDANT BLOOM: Yes, sir.

"THE COURT: Have you had the opportunity to discuss this with Mr. Goldman, before you entered the plea?

"DEFENDANT BLOOM: Yes, sir.

"THE COURT: Again, do you understand that you have a right to a trial either before the Court or a jury if you wanted a trial?

"DEFENDANT BLOOM: Yes, sir.

"THE COURT: Do you understand that when you plead guilty you admit the truth of the charge and waive your right to a trial and appeal?

"DEFENDANT BLOOM: Yes.

"THE COURT: Has anyone made you any promise, threat, coerced, forced or made you enter this plea against your will?

"DEFENDANT BLOOM: No, sir.

"THE COURT: Mr. Kantor, how old are you?

"DEFENDANT KANTOR: Twenty-one.

"THE COURT: Have you had the opportunity to discuss this with Mr. Goldman?

"DEFENDANT KANTOR: Yes, sir.

"THE COURT: Do you understand that you are entering a plea of guilty to a felony punishable by up to five years in the State prison?

"DEFENDANT KANTOR: Excuse me, which charge is that?

"THE COURT: Possession of narcotics.

"DEFENDANT KANTOR: That is the one?

"MR. GOLDMAN: That is the one, the possession, the second one.

"DEFENDANT KANTOR: Yes.

"THE COURT: Do you understand that you have a right to a trial, either before the court or a jury if you wanted a trial?

"DEFENDANT KANTOR: That's right.

"THE COURT: You realize, by pleading guilty, you admit the truth of the charge and waive that right and the right to appeal?

"DEFENDANT KANTOR: Yes.

"THE COURT: Has anyone made you any promise, threat, forced, coerced or made you enter this plea against your will?

"DEFENDANT KANTOR: No, sir.

"THE COURT: All right.

Mr. Robin, do you understand that you have entered a plea of guilty to the Information as charged in both counts?

"DEFENDANT ROBIN: Yes, sir.

"THE COURT: How old are you?

"DEFENDANT ROBIN: Twenty.

"THE COURT: Are your parents aware of this case?

"DEFENDANT ROBIN: Yes. They Are.

"THE COURT: Are they here today?

"DEFENDANT ROBIN: No, sir.

"THE COURT: Have you had the opportunity to discuss it with Mr. Goldman?

"DEFENDANT ROBIN: Yes, sir.

"THE COURT: You have heard what I told the other defendants?

"DEFENDANT ROBIN: Yes.

"THE COURT: You understand you can be sent to state prison?

"DEFENDANT ROBINS: Yes.

"THE COURT: Has anyone made you

any promise, threat, forced, coerced or made you plead guilty against your will?

"DEFENDANT ROBINS: No.

"THE COURT: Let me have a proffer from the state as to the quantity and amount involved in count one.

"MR. O'DONNELL: The quantity, your Honor, 15 spoons of cocaine.

"THE COURT: And as to count two?

"MR. O'DONNELL: Your Honor, may we introduce the evidence on the plea?

"THE COURT: Introduce it on a plea, State's one.

"MR. O'DONNELL: All right.

(Thereupon the articles referred to were admitted as State's exhibit 1, in evidence.)

"MR. O'DONNELL: This is Mr. Speranza, from the telephone company. I think he can look and tell you what the device is and how it operates, * * *."

PROOF OF SERVICE

This is to certify that I have forwarded three copies of the foregoing Brief of Respondent in Opposition and Appendix to counsel for petitioners, Pollack, Yocom, & Haggard, 1700 Northwest 7th Street, Miami, Florida 33125, by mail, this_____day of November, 1972.

WILLIAM L. ROGERS
Assistant Attorney General

State Office Building (530)
1350 N. W. 12th Avenue
Miami, Florida 33136

Of Counsel.